

# EXHIBIT 3

William Parks

Highly Confidential  
New York, NY

August 2, 2004

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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----x  
In Re: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE ) MDL No. 1456  
PRICE LITIGATION ) CIVIL ACTION NO.  
01-CV-12257-PBS  
-----)  
THIS DOCUMENT RELATES TO )  
ALL ACTIONS )

-----x

30(b)(6) DEPOSITION OF WILLIAM PARKS

New York, New York

Monday, August 2, 2004

9:30 a.m.

30(b)(6) deposition of Janssen

Pharmaceutica Inc., by WILLIAM PARKS, held  
at the offices of Patterson, Belknap, Webb &  
Tyler LLP, 1133 Avenue of the Americas, New  
York, New York, pursuant to Notice, before  
Frank J. Bas, a Registered Professional  
Reporter and Notary Public of the State of  
New York.

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1 A. Yes.  
2 Q. They correct their databases to  
3 reflect your new WAC, right?  
4 A. Mm-hmm.  
5 Q. And then they also publish an AWP for  
6 the drug, right?  
7 A. I'm not familiar with Blue Book, but  
8 I do know Red Book does, as well as Medaspan has  
9 a database that also includes an AWP.  
10 Q. Is that AWP -- the AWP they have, is  
11 that different than the suggested AWP?  
12 A. When you say "they," it depends on  
13 the publication.  
14 Q. Okay, well, any publication. Have  
15 there been occasions where what you say is the  
16 suggested AWP is different than what is the  
17 published AWP?  
18 A. I'm sorry, can you repeat that?  
19 Q. Sure. If I look in Red Book I'll see  
20 a column that says AWP, right?  
21 A. Yes.  
22 Q. The same thing in First Data Bank,

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1 right?  
2 A. Mm-hmm.  
3 Q. Okay. That column that says AWP, is  
4 that the same number as the suggested AWP?  
5 A. In Red Book it is.  
6 Q. Okay.  
7 A. And First Data Bank it is not.  
8 Q. As to First Data Bank, has that  
9 always been the case, that the number at First  
10 Data Bank was different than the suggested AWP?  
11 A. No.  
12 Q. When did that change? Let me back  
13 up. So for some period of time the suggested AWP  
14 would be the same number as the AWP listed in  
15 First Data Bank, right?  
16 A. That's correct.  
17 Q. Okay. When did that not -- when did  
18 that not be the same number? That's a bad way to  
19 say it, but you know what I'm asking.  
20 A. I believe it was 2002. March of  
21 2002.  
22 Q. What happened then?

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1 A. March or April. It could have been  
2 April. What happened then, Red Book continued to  
3 publish our suggested AWP, and First Data Bank in  
4 one of their sources called Price Alert,  
5 published a different AWP than our suggested AWP.  
6 Q. Higher or lower?  
7 A. Higher.  
8 Q. Is this a situation that in Price  
9 Alert they started to publish an AWP that was  
10 25 percent higher than your WAC as opposed to the  
11 20 percent it used to be?  
12 A. That's correct.  
13 Q. First Data Bank's other publication  
14 is NDDF, is that right?  
15 A. I'm not familiar with it.  
16 Q. You said in Price Alert.  
17 A. Yes.  
18 Q. So they have some other publications?  
19 A. I don't know. That's the one that  
20 I've always referenced, though. It's the one  
21 that seems to be the most widely used by retail  
22 and other third-party payers.

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1 Q. So when you said in one of their  
2 publications, it's not that you were aware of  
3 another publication where they didn't change that  
4 WAC-to-AWP ratio?  
5 A. They have an on-line source called  
6 AnalySource, which also has AWP and wholesale  
7 acquisition cost.  
8 Q. When the WAC-to-AWP ratio changed in  
9 Price Alert, did it also change in the on-line  
10 source?  
11 A. From First Data Bank, yes.  
12 Q. I'm only asking you this question  
13 because when you say, I noticed that it changed  
14 in one of their publications, it makes me think  
15 that you saw another publication where it didn't  
16 change.  
17 A. And I don't know.  
18 Q. Okay.  
19 A. I just know of one publication,  
20 that's correct.  
21 Q. Did you do any investigation or  
22 inquiry to see what caused them to change the

19 (Pages 70 to 73)

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1 wholesaler expresses an AWP higher than what you  
2 suggested?

3 A. I hadn't seen it until that time.

4 Q. Now, after that time did you go out  
5 and look at the wholesalers and see if you could  
6 find examples of wholesalers suggesting an AWP --  
7 stating an AWP higher than what you had  
8 suggested?

9 A. Not really, no. Again, AWP does not  
10 affect our product line, ambient oral market.  
11 The only number that's important to me is the  
12 wholesale acquisition cost.

13 Q. I understand that. I'm just asking  
14 you, have you ever, either before or after you  
15 talked to Kay Morgan, seen an example of where  
16 the wholesalers, or any of your direct customers,  
17 were stating an AWP higher than the suggested AWP  
18 provided by you?

19 A. Well, I don't see any of their  
20 publications, so I have not seen where they  
21 either promote or have a price list that has the  
22 AWP on it. I don't know. I just am unaware of

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1 how the wholesalers market their services and  
2 sell their product out to the end user. Other  
3 than what I read in the pink sheets and things  
4 like that.

5 Q. By the way, this change by First Data  
6 Bank of the, what I'm going to call the ratio  
7 between WAC and AWP, this applied to just certain  
8 products or to all J&J products?

9 A. I can speak to these five. It  
10 applied to those five that we had a suggested  
11 AWP, and then First Data Bank moved it up to a  
12 higher AWP. Again, based upon what they use as a  
13 survey, or claim they used as a survey.

14 Q. When did they move it up? Did they  
15 move all of these up in one day?

16 A. We had a price action during this  
17 time, and when they recalibrated the acquisition  
18 cost to the new communication that I sent out,  
19 evidently they recalibrated the AWP at that time.

20 Q. So it happened when you changed the  
21 price?

22 A. Yes.

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1 Q. By the way, you changed the price of  
2 all five of these products at the same time?

3 A. No.

4 Q. Typically at Janssen, would many  
5 products change at the same time, or would it be  
6 an individual decision of what product to change  
7 price, when?

8 A. Since '91 it's kind of varied. Some  
9 products would go together, others wouldn't. And  
10 in this particular case four of the products had  
11 a price change, one did not.

12 Q. Are you aware that this change in the  
13 ratio between WAC and AWP happened to other  
14 products at J&J at this time?

15 A. Yes.

16 Q. Is it fair to say that you were J&J's  
17 contact person with Kay Morgan over there?

18 A. There were other people that had  
19 contacted Kay, but she prefers to work with one  
20 J&J contact.

21 Q. And that was you?

22 A. Yes.

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1 Q. And, in fact, you sent some e-mails  
2 throughout -- beyond Janssen, discussing your  
3 communications with Kay Morgan?

4 A. Yes.

5 Q. Other than those e-mails, was there  
6 any other discussion or meeting at J&J about this  
7 change by First Data Bank?

8 A. Not that I'm aware of.

9 Q. Any further follow-up on the part of  
10 J&J, meaning a letter to First Data Bank, or  
11 anything like that?

12 A. Not that I was aware of. So if any  
13 communication was sent over, I'm not aware of it.

14 Q. Are you still the contact person with  
15 Kay Morgan over there?

16 A. Yes. In fact, most -- she'll  
17 recommend other people to call me if they have  
18 questions. But I can't say, again, that not  
19 everyone -- not other people within J&J are  
20 calling there. But she prefers to deal with just  
21 one. You can imagine how many phone calls she  
22 might have received.

22 (Pages 82 to 85)

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1 Q. I can imagine. Prior to this change  
2 by First Data Bank, did they give you any notice  
3 or warning that this was going to happen?

4 A. No.

5 Q. So how did you discover it? When you  
6 looked in a First Data Bank report or Price Alert  
7 and saw it?

8 A. Yes. At least I think. Let me  
9 rephrase that. I think that that's what the  
10 trigger was. I don't know if someone called me  
11 and said it appears to be different, based on the  
12 conversations that they had with someone else.  
13 But my general understanding was that it was at  
14 that time.

15 Q. Okay.

16 MR. MACORETTA: You know what? We've  
17 been going for a little bit. Let's just  
18 take a break here for a couple of minutes.

19 MR. SCHAU: Sure.

20 (Recess.)

21  
22 BY MR. MACORETTA:

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1 Q. Mr. Parks, the suggested AWP, why do  
2 you even provide that number?

3 A. It's just always there. And when I  
4 came in to trade sales, there was an AWP on the  
5 form, and we just continued to include it. It's  
6 a good question.

7 Q. Thank you. What form are you talking  
8 about, when you say "on the form"?

9 A. There was a typical price change  
10 notification form that my predecessor had used,  
11 and we just continued to use that.

12 Q. Did you ever ask that question to  
13 anybody? Why are we even stating this number,  
14 suggested AWP?

15 A. No.

16 Q. Let me show you what we're going to  
17 mark as Exhibit Parks 003.

18 (Exhibit Parks 003 for  
19 identification, document Bates-numbered  
20 MDL-JAN00002915 through 2916, urgent price  
21 change notification, March 8, 2002.)

22 MR. SCHAU: I just noticed, I

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1 probably should have mentioned this earlier,  
2 but the fact that this is a highly  
3 confidential document reminds me that at  
4 least for the moment I would like to  
5 designate the entire transcript highly  
6 confidential under the terms of the  
7 protective order, and if there are sections  
8 that you have problems with on that, we can  
9 address them later on.

10 MR. MACORETTA: That's fine. I'm not  
11 sure this would go under the definition of  
12 highly confidential, but we'll deal with  
13 that when we get there.

14 MR. SCHAU: I understand.

15 BY MR. MACORETTA:

16 Q. Mr. Parks, this is you on the front  
17 page, right?

18 A. That's correct.

19 Q. Okay. Page 2, is this typically the  
20 form of price list that you send out to people?

21 A. Yeah. There may be slight  
22 modifications from time to time, but

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1 predominantly this is the format that we've been  
2 sending it out in.

3 Q. And the Direct Distributor Price,  
4 that's the WAC?

5 A. That's correct.

6 Q. Is that a common term you use at  
7 Janssen, Direct Distributor Price?

8 A. Again, it was on the form.  
9 (Nodding.)

10 Q. By the way, when I look at this, at  
11 the bottom for Aciphex it says it's co-marketed  
12 by Eisai, is that how you say that?

13 A. Yes.

14 Q. Eisai and Janssen? Is that in the  
15 United States, it's co-marketed by Eisai?

16 A. It is in the United States, yes, and  
17 I believe it -- there's different relationships  
18 throughout the world.

19 Q. I just want to talk to you about the  
20 United States. What does Eisai do to market  
21 Aciphex in the United States?

22 A. I'm sorry. They're the manufacturer

23 (Pages 86 to 89)

# EXHIBIT 4

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1 expectations were. We've been through that in --  
2 for days.

3 And, you know, to just to pull a question  
4 out of -- out of thousands of pages of transcript,  
5 I -- I'd want to think about how I'm responding to  
6 these in the context of that entire report and that  
7 entire record. And I -- I feel reluctant to just  
8 respond de novo to a question that's pulled out of  
9 an earlier matter.

10 Q. What I want to do is show you your  
11 December 15, 2005 --

12 A. Abbreviated version.

13 Q. -- report in the class action. It's  
14 entitled, "Declaration of Raymond S. Hartman in  
15 Support of Plaintiffs' Claims of Liability and  
16 Calculation of Damages." I don't think there's any  
17 need to mark that as an exhibit here, but I want to  
18 direct your attention to Paragraph 21.

19 A. And as I'm attempting to respond  
20 accurately and in an informed way, I'm kind of  
21 quickly looking at what went before. Did you say  
22 Paragraph 21 or Page 21?

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1 Q. Paragraph 21.

2 A. (Witness reviews document.) Okay. So I'm  
3 at Paragraph 21. Your question?

4 Q. Just directing your attention to Paragraph  
5 21.

6 A. Right.

7 Q. Do you have it?

8 A. I do.

9 Q. And what you do in Paragraph 21 is you  
10 quote from the Court's August 2005 opinion in which  
11 the Court describes your methodology. And you say  
12 at the bottom of the page that we're looking at  
13 here, it's Page 14, "She concludes --" she,  
14 referring to the Court, "-- Hartman terms his  
15 overall approach the yardstick method because he  
16 intends to determine what the market reasonably  
17 expected the spread to be on average." Is that  
18 what you did in the class actions?

19 A. As for a yardstick for determination of --  
20 of liability, that's what I did, yes.

21 Q. And the yardstick that you used was 30  
22 percent, correct?

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1 A. That's correct.

2 Q. And that -- you used that 30 percent  
3 yardstick because that's what you determined the  
4 market expectation to be, correct?

5 A. I used that 30 percent because I reviewed  
6 a set of comparator drugs. I reviewed a set of the  
7 -- the information that is discussed in Paragraph  
8 21, and I found the 30 percent to be a conservative  
9 bound for an expectation for a drug that was not  
10 subject to the -- the exploitation of spread for  
11 spread competition or to move market share.

12 Q. And that expectation would apply to the  
13 Medicaid agencies as well as the rest of the  
14 marketplace, is that correct?

15 A. This expectation and this understanding  
16 was a -- a general statement for the market as a  
17 whole.

18 Q. And that would include Medicaid, correct?

19 A. It -- it includes all market participants.

20 Q. Including Medicaid, correct?

21 A. That's right.

22 Q. Have you read any of the depositions in

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1 the Montana and Nevada case?

2 A. I think my staff has. I think I've asked  
3 them to, but I can't recall at the moment.

4 Q. You personally have not done so?

5 A. Can I -- can I ask one -- one -- are we  
6 done with this?

7 Q. Yes.

8 A. Can I -- okay. Can I just get this out of  
9 the way. I have rubber bands around my hands, and  
10 I just want to kind of give this back to you. I  
11 can't recall whether I did or not. I -- if there  
12 were cases where I wanted to see the discussion of  
13 a particular topic, I would ask my staff to review  
14 discovery materials. And if there -- and I will  
15 generally ask is there deposition testimony that --  
16 that goes to this issue. But I can't recall what  
17 was -- or what I saw. If I relied on it, it would  
18 appear in the notes.

19 Q. So is it fair to say that you can't  
20 identify any particular depositions that you have  
21 read in connection with the Montana and Nevada  
22 cases?